



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-R09-OAR-2019-0005; FRL-9993-10-Region 9]**

#### **Air Plan Approval; California; Imperial County Air Pollution Control District**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Imperial County Air Pollution Control District (ICAPCD) portion of the California State Implementation Plan (SIP). These revisions concern emissions of particulate matter (PM) from open areas and wood burning appliances and update certain definitions relevant to stationary source permitting. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Any comments must arrive by **[Insert date 30 days after the date of publication in the Federal Register]**.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R09-OAR-2019-0005 at <https://www.regulations.gov>. For comments submitted at Regulations.gov, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www.epa.gov/dockets/commenting-epa-dockets>.

**FOR FURTHER INFORMATION CONTACT:** Christine Vineyard, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone:(415) 947-4125 or by email at *vineyard.christine@epa.gov*.

**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

## Table of Contents

- I. The State’s Submittal
  - A. What rules did the State submit?
  - B. Are there other versions of these rules?
  - C. What is the purpose of the submitted rules?
- II. The EPA’s Evaluation and Action
  - A. How is the EPA evaluating the rules?
  - B. Do the rules meet the evaluation criteria?
  - C. The EPA’s recommendations to further improve the rules

D. Public comment and proposed action

III. Incorporation by Reference

IV. Statutory and Executive Order Reviews

**I. The State's Submittal**

A. *What rules did the State submit?*

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by the ICAPCD and submitted by the California Air Resources Board (CARB).

TABLE 1 - SUBMITTED RULES

Local Agency	Rule #	Rule Title	Adopted/Amen ded/Revised	Submitted
ICAPCD	101	Definitions	09/11/18	10/29/18
ICAPCD	428	Wood Burning Appliances <sup>1</sup>	09/11/18	10/29/18
ICAPCD	429	Mandatory Episodic Curtailment of Wood and Other Solid Fuel Burning	09/11/18	10/29/18
ICAPCD	804	Open Areas	09/11/18	10/29/18

On December 12, 2018, the EPA determined that the submittal for ICAPCD Rules 101, 428, 429, and 804 met the completeness criteria in 40 CFR part 51 appendix V, which must be met before formal EPA review.

B. *Are there other versions of these rules?*

There are no previous versions of Rules 428 and 429 in the SIP. We approved earlier

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<sup>1</sup>We are not acting on the opacity in limit in section E.4.2. of Rule 428 at this time. However, ICAPCD Rule 401, which has been approved into the California SIP (54 FR 5448 February 3, 1989), establishes a 20% opacity limit that applies to most sources, including wood burning appliances. Our action on Rule 428 will not affect the applicability of this existing limit.

versions of Rules 101 and 804 into the SIP on June 8, 2017 (82 FR 26594) and April 22, 2013 (78 FR 23677), respectively. The ICAPCD adopted revisions to the SIP-approved versions on September 11, 2018, and CARB submitted them to us on October 29, 2018. The ICAPCD also previously adopted revisions to 804 on April 12, 2016, and CARB submitted the revised rule to us on August 22, 2016. We consider this earlier submittal to have been superseded by the October 29, 2018 submittal. While we are acting on only the most recently submitted version, we have reviewed materials provided with previous submittals.

C. *What is the purpose of the submitted rules and revisions?*

Emissions of PM, including PM equal to or less than 2.5 microns in diameter (PM<sub>2.5</sub>) and PM equal to or less than 10 microns in diameter (PM<sub>10</sub>), contribute to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires states to submit regulations that control PM emissions.

New Rule 428 limits emissions of PM from wood burning appliance by requiring use of only New Source Performance Standard (NSPS) certified devices or EPA-Qualified fireplaces; restricting the use of burning materials to seasoned wood, uncolored paper, pellets, and manufactured logs; and requiring distribution of public awareness information to educate owners on proper installation, operation, and maintenance of the wood burning appliance.

New Rule 429 requires a mandatory wood burning curtailment in Calexico whenever the ICAPCD forecasts that the 24-hour average PM<sub>2.5</sub> concentration will exceed 35 micrograms per cubic meter (µg/m<sup>3</sup>) at the Calexico monitoring station. Rule 429 also includes a contingency

measure that will be triggered upon notification from the EPA that the Imperial County nonattainment area has failed to (1) meet Reasonable Further Progress in the “Imperial County 2018 Annual Particulate Matter Less Than 2.5 Microns in Diameter State Implementation Plan” (“2018 Annual PM<sub>2.5</sub> SIP”), (2) meet a Quantitative Milestone in the 2018 Annual PM<sub>2.5</sub> SIP, and/or (3) submit a Quantitative Milestone Report required under 40 CFR 51.1013(b). If this occurs, then a mandatory curtailment shall be declared for all of Imperial County whenever the forecast for the 24-hour average PM<sub>2.5</sub> concentration is equal to or exceeds 30 µg/m<sup>3</sup> at the Calexico monitoring station.

Rule 804, Open Areas, was revised to include a provision that would expand the rule’s applicability if contingency measures are triggered. Another new provision allows for implementation of alternative control measures in the exposed playa at the Salton Sea, subject to approval by the ICAPCD and the EPA.

Four definitions in Rule 101, Definitions, were revised to correspond to revisions in Rule 207 - New and Modified Stationary Source Review.<sup>2</sup>

The EPA’s technical support documents (TSDs) have more information about these rules.

## **II. The EPA’s Evaluation and Action**

### **A. *How is the EPA evaluating the rules?***

Rules in the SIP must be enforceable (see CAA section 110(a)(2)), must not interfere with applicable requirements concerning attainment and reasonable further progress or other CAA requirements (see CAA section 110(l)), and must not modify certain SIP control requirements in nonattainment areas without ensuring equivalent or greater emissions reductions

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<sup>2</sup> CARB submitted revisions to Rule 207 to the EPA on October 5, 2018. The EPA proposed to approve these revisions on March 22, 2019 (84 FR 10753).

(see CAA section 193).

The ICAPCD regulates a nonattainment area classified as Moderate for the 2012 annual  $PM_{2.5}$  standard and Serious for the annual  $PM_{10}$  standard (40 CFR 81.305). Generally, SIP rules must implement Best Available Control Measures (BACM) in Serious  $PM_{10}$  nonattainment areas (see CAA section 189(a)(1)(B)) and Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), as well as additional reasonable measures, in Moderate  $PM_{2.5}$  nonattainment areas (see CAA sections 172(c)(1) and 189(a)(1)(C)). An overall RACM and RACT evaluation is generally performed in context of a broader plan.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation and rule stringency requirements for the applicable criteria pollutants include the following:

1. "State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990," 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. "Guidance Document for Correcting Common VOC & Other Rule Deficiencies," EPA Region 9, August 21, 2001 (the Little Bluebook).
4. "State Implementation Plans for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,"

59 FR 41998 (August 16, 1994).

5. “PM-10 Guideline Document,” EPA 452/R-93-008, April 1993.
  6. “Fugitive Dust Background Document and Technical Information Document for Best Available Control Measures,” EPA 450/2-92-004, September 1992.
- B. *Do the rules meet the evaluation criteria?*

These rules are consistent with CAA and regulatory requirements and relevant guidance regarding enforceability, BACM, RACM/RACT, and SIP revisions. EPA’s TSDs include more information on our evaluation of the rules.

- C. *EPA recommendations to further improve the rules*

The TSDs include recommendations for the next time the ICAPCD modifies the rules.

- D. *Public comment and proposed action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to fully approve the submitted rules (except for Rule 428 section E.4.2) because they fulfill all relevant requirements. We will accept comments from the public on this proposal until [**Insert date 30 days after date of publication in the Federal Register**]. If we take final action to approve the submitted rules, our final action will incorporate these rules into the federally enforceable SIP.

### **III. Incorporation by Reference**

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the ICAPCD rules described in Table 1 of this preamble. The EPA has made, and will continue to make, these materials available through [www.regulations.gov](http://www.regulations.gov) and at the EPA Region IX Office (please contact the person identified in

the “FOR FURTHER INFORMATION CONTACT” section of this preamble for more information).

#### **IV. Statutory and Executive Order Reviews**

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA’s role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- is not a “significant regulatory action” subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);



- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide the EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference,  
Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

**AUTHORITY:** 42 U.S.C. 7401 *et seq.*

Dated: April 18, 2019.

Deborah Jordan  
Acting Regional Administrator,  
Region IX.

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